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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

No. 749

PEOPLE OF THE STATE OF ILLINOIS, ex rel.
ROBERT L. GORDON, Director of Labor,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF FOR PETITIONER.

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BRIEF FOR PETITIONER.

The Opinion of the Court Below.

The order of the Circuit Court of Cook County, Illinois, was entered without an opinion (R. 18, 19). The final opinion of the Supreme Court of Illinois (R. 41-54) in this case is reported in 391 Ill. 29, 62 N. E. (2d) 537, under the name "*The People, for the use of Francis B. Murphy, Director of Labor, Appellee*, v. *Advertising Review Publishing Company, United States of America, Appellant*", as No. 28490.

Jurisdiction of This Court.

The jurisdiction of this Court is based upon the provisions of Section 237 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 937, U. S. Code, Title 28, Section 344, paragraph (b), authorizing writs of *certiorari* to be issued to the highest courts of the various states where any title, right, privilege or immunity is specially set up or claimed by either party under any statute of, or authority exercised under, the United States.

In its answer and counterclaim (R. 5), the United States, specially based its claim for a priority in the distribution of the assets of the debtor upon the provisions of Section 3466 of the Revised Statutes of the United States. The applicability of this Federal statute was raised and contested throughout every state of these proceedings (R. 12, 13, 26, 27, 43, 47, 48). The Circuit Court of Cook County, Illinois, in effect decided against the contentions of the Collector (R. 18, 19). The Supreme Court of Illinois, which is the highest court in Illinois, passed upon the applicability of said Section 3466 and specifically granted priority to the Collector thereunder (R. 41, 54).

In seeking a review by this Court two reasons for granting the writ were urged; **First**—That the Court below decided a Federal question of substance not heretofore precisely determined by this Court and in so doing expressly recognized (R. 50) that its decision was in direct conflict with the decision of the highest court of a sister state (*Rivard* v. *Bijou Furniture Co.*, 68 R. I. 358); and **Second**—That the court below decided Federal questions of substance in a way probably not in accord with applicable decisions of this Court. These reasons are fully set forth in the Petition for *Certiorari* (pp. 7-9), are discussed fully in

the body of the brief and argument herein and will therefore not be discussed further at this point.

The final judgment of the Supreme Court of Illinois was rendered on September 17, 1945 (R. 41). The petition for *certiorari* was filed on January 15, 1946, time for the filing of which had been extended by order of this Court to and including January 16, 1946 (R. 56). On February 25, 1946, *certiorari* was granted by this Court (R. 57).

A companion case, *People of the State of Illinois, ex rel. Robert L. Gordon, Petitioner*, v. *Nigel D. Campbell, Collector of Internal Revenue, Respondent*, No. 750 of the current term, involving similar but not identical issues, is also before this Court, *certiorari* having been granted concurrently with the award in the instant case.

Concise Statement of The Case.

This case and the above entitled companion case present two important questions, decided in favor of the United States Government by the Supreme Court of Illinois. The first of these issues was decided adversely to the United States Government by the Supreme Court of Rhode Island in the case of *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563; 68 R. I. 358, 27 Atl. (2d) 853, in an opinion which the Supreme Court of Illinois expressly recognized as in point but declined to follow. These questions may be stated as follows:

> In view of the intent of Congress as manifested in the Social Security Act and related legislation, does section 3466 of the Revised Statutes of the United States (Appendix, *infra*,) apply to give a claim of the United States for Social Security excise taxes and capital stock taxes a priority over the claim of a state for Unemployment Compensation contributions when

such unemployment compensation contributions are exacted under a state statute adopted in accordance with the Congressional policy evinced by the Federal Act?

Was the claim of the State of Illinois for Unemployment Compensation contributions a secured claim and consequently entitled to priority over the unsecured claim of the United States for Social Security Excise taxes and capital stock taxes?

These questions emerge from facts which are not in dispute and are briefly stated as follows:

On January 9, 1939, the Advertising Review Publishing Company, a corporation, made an assignment for the benefit of its creditors to William Fisher, Trustee, who reduced the assets of the corporation to cash (R. 1-2). The Collector of Internal Revenue filed claims with the Trustee for capital stock taxes in the sum of $58.73, plus interest, taxes under Title VIII of the Social Security Act in the sum of $1,065.52, plus interest, and taxes under Title IX of the Social Security Act in the sum of $1,284.36, plus interest. The Director of Labor of the State of Illinois filed a claim for unemployment compensation contributions in the sum of $721.29, plus interest at the rate of one per cent a month (R. 2-3).

On February 11, 1942 the Trustee filed a complaint in interpleader in the Circuit Court of Cook County, Illinois, setting out the foregoing facts and requesting instructions from the Court as to the distribution of the funds in his hands. The Director of Labor and the Collector of Internal Revenue were made defendants (R. 1-4). By stipulation, the United States was made a party defendant and the Collector of Internal Revenue was dismissed (R. 4-5).

The United States filed its answer to the complaint of the Trustee and alleged that its tax claims were entitled to priority of payment under Section 3466 of the United States Revised Statutes (R. 6, 8). On April 2, 1943, the Director of Labor filed a complaint in the Circuit Court of Cook County, Illinois, to foreclose his statutory lien for unemployment compensation contributions. The allegations of the complaint may be summarized as follows:

The Advertising Review Publishing Company, a corporation, hereinafter referred to as the debtor, was an employer, subject to the Illinois Unemployment Compensation Act (R. 8-9). It became indebted to the Director of Labor in the sum of $1,054.91 for contributions and interest due under the Act (R. 10). It admitted its indebtedness to the Director, and its liability for the said contributions and the amount thereof were based upon reports it had filed with the Director of Labor (R. 10). Section 26(a) of the Illinois Unemployment Compensation Act created a lien in favor of the Director for a sum equal to the amount of contributions, interest and penalties due from the said debtor. Such lien attached to the personal property or rights used by the debtor in connection with its business (R. 10-11). Notice of the said lien was filed by the Director on March 23, 1943 in the Office of the Recorder of Deeds, Cook County, Illinois (R. 11, 15, 16). The Director contended that his lien was paramount to the claims of the United States (R. 12-13).[1]

The two cases were consolidated in the Circuit Court of Cook County, Illinois (R. 16). By order of said Court the funds in the hands of the Trustee, amounting to $1,010.81, were deposited with the Clerk of the Circuit Court of Cook

[1] The provisions of the Illinois Unemployment Compensation Act relating to the lien of the Director are set forth in the Appendix *infra*, pp. 35-39.

County, Illinois (R. 19). The Court later entered an order that the lien of the Director be given priority to the extent of 90 per cent of the funds on deposit with the Clerk of the Circuit Court and that the United States have priority as to the ten per cent remaining (R. 19).

In the Supreme Court of Illinois, because of the similarity of certain issues, the case at bar was consolidated for opinion with the companion case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *Chicago Waste & Textile Company, et rel., Carter H. Harrison, Collector of Internal Revenue, Appellant,* No. 28490 (R. 21, 41) now before this Court under the style "*People of the State of Illinois, ex rel. Robert L. Gordon, Director of Labor, Petitioner,* v. *Nigel D. Campbell, Collector of Internal Revenue, Respondent,* No. 750 of the current term. Since the facts in the two cases are dissimilar and the case at bar has additional issues, separate petitions were submitted to this Court and separate briefs are being filed.

In its opinion of May 23, 1945, the Supreme Court of Illinois denied petitioner's contentions and held that the claim of the United States was entitled to priority over the claim of the Director (R. 21-33). A petition for a rehearing was denied on September 17, 1945 (R. 40), at which time a revised opinion was entered which likewise held that the claim of the United States was entitled to priority over the claim of the Director (R. 41-54). In reaching this result, the Supreme Court of Illinois expressly conceded that its holding was in direct conflict with the holding of the Supreme Court of Rhode Island in *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. (2d) 563 (R. 50).

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.[2]

The Supreme Court of Illinois erred:

1. In holding that the claims of the United States were entitled to priority under Section 3466 of the United States Revised Statutes over the claim of the petitioner for unemployment compensation contributions.

2. In failing to hold that petitioner's secured claim was entitled to priority over the unsecured claims of the United States.

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[2] The Supreme Court of Illinois also erred in its interpretation of Section 602(a) (1) of the Revenue Act of 1943 (R. 46-47). Its interpretation is contrary to that of the Federal government itself and of the Senate Committee which drafted the legislation. (Article 211 of Regulation 90 as amended by T. D. 5383, C. C. H. Unemployment Insurance Service, Vol. 1, pp. 2040-2041, 2046.) The obvious misconstruction of Section 602(a) (1) of the Revenue Act of 1943 by the court below is, however, not being urged for the following reason: Petitioner raised the issue as to the applicability of said Section 602(a) (1) in his petition for rehearing only because in its original opinion of May 23, 1945 in the case of *The People, For the Use of Francis B. Murphy, Director of Labor, Appellee,* v. *The Chicago Waste and Textile Company, et al.—(Carter H. Harrison Collector of Internal Revenue, Appellant)* No. 28474, which was consolidated for opinion with the case at bar, the Supreme Court of Illinois held that due to the provisions of Section 602(b) of the Revenue Act of 1943 the petitioner was entitled to the entire amount on deposit with the Clerk of the Circuit Court of Cook County, Illinois.

In its final opinion of September 17, 1945, the Supreme Court of Illinois held in the said companion case that Section 602(b) was only applicable as to taxes arising under Title IX of the Social Security Act and that the United States was entitled to priority under Section 3466 as to that portion of its claim for taxes arising under Title VIII of the Social Security Act. The issue as to the application and construction of said Section 602(a) (1) in the case at bar is, therefore, no longer a moot one, since the payment of the claim of the United States for taxes under Title VIII of the Social Security Act would, if allowed, exhaust the entire funds on deposit with the Clerk of the Circuit Court.

SUMMARY OF ARGUMENT.

I.

In View of the Intent of Congress as Manifested in the Social Security Act and Related Legislation, Section 3466 of the Revised Statutes Is Not Applicable to Give a Claim of the United States for Social Security Excise Taxes and Capital Stock Taxes a Priority Over the Claim of a State for Unemployment Compensation Contributions When Such Contributions Are Exacted Under a State Statute Adopted in Accordance with the Congressional Policy Evinced by the Federal Act.

United States v. *Marxen*, 307 U. S. 200, 206.

United States v. *Guaranty Trust Company of New York*, 280 U. S. 478, 485.

Mellon v. *Michigan Trust Company*, 271 U. S. 236, 240.

Cook County National Bank v. *United States*, 107 U. S. 445.

United States v. *Texas*, 314 U. S. 480.

Price v. *United States*, 269 U. S. 492.

Stripe v. *United States*, 269 U. S. 503.

Spokane County v. *United States*, 279 U. S. 80.

New York v. *Maclay*, 288 U. S. 290.

United States v. *Waddill Co.*, 323 U. S. 353.

Matter of White Plains Oil Corp., 287 N. Y. 141.

United States v. *New York*, 315 U. S. 510.

Steward Machine Company v. *Davis*, 301 U. S. 548, 586-589, 591.

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Rivard v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d) 853.

II.

The Claim of the State of Illinois for Unemployment Compensation Contributions Was a Secured Claim and Consequently Was Entitled to Priority Over the Unsecured Claim of the United States for Social Security Excise Taxes and Capital Stock Taxes.

Price v. *United States*, 269 U. S. 492, 499.
Mellon v. *Michigan Trust Co.*, 271 U. S. 236, 239.
Bixler v. *Summerfield*, 195 Ill. 147, 153.
People v. *Chicago Gas Trust Company*, 130 Ill. 268, 287.
Hooven v. *Burdette*, 153 Ill. 672, 679.
Rivard v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d) 853.

ARGUMENT.

I.

IN VIEW OF THE INTENT OF CONGRESS AS MANIFESTED IN THE SOCIAL SECURITY ACT AND RELATED LEGISLATION, SECTION 3466 OF THE REVISED STATUTES IS NOT APPLICABLE TO GIVE A CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES AND CAPITAL STOCK TAXES A PRIORITY OVER THE CLAIM OF A STATE FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WHEN SUCH CONTRIBUTIONS ARE EXACTED UNDER A STATE STATUTE ADOPTED IN ACCORDANCE WITH THE CONGRESSIONAL POLICY EVINCED BY THE FEDERAL ACT.

This Court has repeatedly held that it will not apply Section 3466 where the concept of Federal priority is inconsistent with the intention of Congress, as manifested in a later Federal statute, and that this is so even where such other Federal statute does not in express terms waive such priority but leaves such intention to be inferred from the general provisions and purposes of such statute.

In *United States* v. *Marxen*, 307 U. S. 200, this Court held that the United States was not entitled to priority under Section 3466 on a claim transferred to it after the filing of a petition in bankruptcy, because of the general purposes of the Bankruptcy Act. This Court, at page 206, said:

> "But this principle of construction (priority to the United States) is subject to the limitation that the generality of language of the section is restricted * * * by legislative intention as shown in other statutes." (Bracketed words added.)

In *United States* v. *Guaranty Trust Company of New York*, 280 U. S. 478, this Court denied the United States priority under Section 3466 for loans due it under the Transportation Act because the intention to build up the credit standing of the railroads was inconsistent with the claimed priority. In so holding, this Court, at page 485, said:

> "To have given priority to debts due the United States pursuant to Title II, would have defeated the purpose of Congress. * * * The entire spirit of the Act makes clear the purpose that the rule leading to such consequences should not be applied."

In *Mellon* v. *Michigan Trust Company*, 271 U. S. 236, priority under Section 3466 was denied because the Federal Control Act, affecting the railroads, manifested an intention that the carriers under Federal control should be treated as before their transfer to Federal operation. In so holding, this Court, at page 240, said:

> "To permit the claimed preference, we think, would conflict with the spirit and broad purpose of the statute."

See also: *Cook County National Bank* v. *United States*, 107 U. S. 445.

This general principle is not challenged or limited by the holdings in such cases as *United States* v. *Texas*, 314 U. S. 480; *Price* v. *United States*, 269 U. S. 492; *Stripe* v. *United States*, 269 U. S. 503; *Spokane County* v. *United States*, 279 U. S. 80; *New York* v. *Maclay*, 288 U. S. 290; *United States* v. *Waddill*, 323 U. S. 353; or *Matter of White Plains Oil Corp.*, 287 N. Y. 141, cited by respondent in its brief in opposition. In none of those cases was it contended that the congress, in and by a subsequent Federal statute, had manifested its intention that, as to claims

arising under such subsequent statute, the priority provisions of Section 3466 were not to be applied.

Nor does the holding of this Court in *United States* v. *New York*, 315 U. S. 510, cited by respondent in its brief in opposition, challenge or limit this general principle. A plain reading of the *New York* case reveals its inapplicability to the question under consideration. The *New York* case did not involve Section 3466 of the United States Revised Statutes. It involved Section 64 (a) (4) of the Bankruptcy Act [1] which places State and Federal claims on a parity. The following three issues were considered in the *New York* case: (1) Whether the claim of the United States based on Sections 801 and 802 of Title VIII of the Social Security Act was a claim for a debt rather than for taxes and thus not entitled to priority under Section 64 (a) (4) of the Bankruptcy Act; (2) Whether a portion of the claim of the United States, based on Title IX of the Social Security Act, constituted a penalty rather than a tax; (3) The formula to be used in prorating the funds. Obviously the decision in the New York Case had no bearing on the question under consideration in the case at bar.

The above general legal principles being established, let us now examine the provisions of the Social Security Act and related legislation to ascertain whether in and by such statutes the Congress has manifested an intention that the provisions of Section 3466 shall not apply as between a claim of the United States for Social Security excise taxes and a claim of a State for unemployment contributions exacted under a State statute adopted in accordance with the congressional policy evinced by such Federal Act.

[1] "Section 64. Debts which have priority.—a. The debts to have priority in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and order of payment shall be . . . (4) taxes legally due and owing by the bankrupt to the United States or any State or any subdivision thereof . . ." U. S. C., Title 11, § 104.

The petitioner's claim for unemployment compensation contributions is predicated on a law which, like all other State unemployment compensation statutes, was enacted in furtherance of a paramount Federal policy. The character and origin of petitioner's claim stem from Title IX of the Social Security Act. The purpose of Title IX, as we shall show was to create a National program of unemployment insurance by inducing every State in the Union to establish a system of unemployment insurance which would meet the minimum standards imposed by Congress. Through the agency of each State, Congress sought the imposition and collection of contributions to be used in the payment of benefits to unemployed workers. Such action by the States was deemed essential in order to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury by relieving it of the terrific drains made upon it by unemployment relief. *Steward Machine Company* v. *Davis*, 301 U. S. 548, 586-589, 591.

Although petitioner's claim for unemployment compensation contributions has been referred to as a claim of the State, it is in reality a claim of the Nation. In its relation to the welfare of the Country and the needs of the Federal Treasury, it is, unquestionably, tantamount to a claim of the United States. That Congress deemed the raising of revenue through the States for the relief of the unemployed to be of such tremendous National importance as to bar the application of Section 3466 is incisively demonstrated by (1) the exigencies which gave rise to a National program of unemployment insurance; (2) the provisions of Titles III, VII and IX of the Social Security Act; (3) the amendments to Title IX; (4) related legislation of Congress.

1. The critical conditions which gave rise to a national program of unemployment insurance.

These exigencies have been pertinently and graphically described by this Court. In *Steward Machine Company* v. *Davis, supra,* pp. 586-588, which involved the constitutionality of Title IX, this Court declared:

> ". . . there is need to remind ourselves of facts as to the problem of unemployment . . . . During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. Often the average was more than ten million; at times a peak was attained of sixteen million or more. Disaster to the breadwinner meant disaster to dependants . . . The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve. It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare. Cf. *United States* v. *Butler*, 297 U. S. 1, 65, 66, *Helvering* v. *Davis*, decided herewith. The nation responded to the call of the distressed. Between January 1, 1933 and July 1, 1936, the states . . . incurred obligations of $689,291,802 for emergency relief; local subdivisions an additional $775,675,366. In the same period the obligations for emergency relief incurred by the national government were $2,920,307,125, or twice the obligations of states and local agencies combined.
>
> According to the President's budget message for the fiscal year 1938, the national government expended for public works and unemployment relief for the three fiscal years 1934, 1935 and 1936, the stupendous total of $8,681,000,000. The *parens patriae* has many reasons—fiscal and economic as well as social and moral—for planning to mitigate disasters that bring these bur-

dens in their train. . . . insofar as there was failure by the states to contribute relief according to the measure of their capacity, a disproportionate burden, and a mountainous one, was laid upon the resources of the Government of the nation."

In *Helvering* v. *Davis*, 301 U. S. 619, 641, which involved an attack upon the constitutionality of Titles II and VII of the Social Security Act (Old Age Benefits), this Court stated:

". . . The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. . . . Spreading from state to state, unemployment is an ill not particular but general, which may be checked, if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the *Steward Machine Co. supra*, has set the doubt at rest. . . ."

The national scope of the problem of unemployment was stressed by the President of the United States in his message to Congress on June 8, 1934[2] wherein he declared: "We are compelled to employ the active interests of the Nation as a whole through government in order to encourage a greater security for each individual who composes it. . . . If, as our Constitution tells us, the Federal government was established, among other things, to promote the general welfare it is our plain duty to provide for that security upon which welfare depends. . . ."

Both branches of Congress emphasized that unemployment relief posed the most serious question for the Nation.[3]

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2 Cong. Rec. Vol. 78, Pt. 10, p. 10770.

3 Senate Report No. 628, 74th Congress, 1st Session, p. 10; House Report No. 615, 74th Congress, 1st Session, p. 7.

2. Title IX of the Social Security Act.

To cope with the problem, Congress enacted Titles III, VII and IX of the Social Security Act (*Infra* pp. 34-44) Briefly, Title IX provides that every employer (with stated exceptions) of eight or more workers is to pay an annual excise tax, measured by wages. The taxpayer, however, is allowed a credit against the Federal tax for the amount of contributions paid into an unemployment compensation fund established under a State law, said credit not to exceed 90 per cent of the Federal tax.[4] Such credit is allowable only if the State law is periodically certified by the Social Security Board to the Secretary of the Treasury as satisfying certain minimum criteria (*Infra* pp. 39-41). Among these criteria, which will shortly be considered, is the requirement that the State law provide that the contributions paid into the State fund be promptly paid over to the Secretary of the Treasury to the credit of the "Unemployment Trust Fund." The Secretary of the Treasury is directed to invest the funds (except such portion as is, in his opinion, required to meet current withdrawals) in government securities. He is directed to pay out of the fund, to any competent agency, such sums as it shall duly requisition from the amount standing to its credit. The money withdrawn from the Unemployment Trust Fund by the State agency must be used solely for the payment of unemployment compensation benefits.

The plain purpose of the credit is to build up an adequate fund through the payment of contributions into State unemployment compensation systems, thereby sustaining the National burden of unemployment and safeguarding the Federal Treasury. To the extent that taxpayers make con-

[4] The remaining 10 per cent is used in covering the costs of administering the State unemployment compensation systems. See *infra*, p. 20.

tributions to a State unemployment compensation fund, the drain upon the Federal Treasury is diminished. *Steward Machine Company* v. *Davis*, *supra*, pp. 589-591. The Federal tax and the credit are "approximate equivalents." *Steward Machine Company* v. *Davis*, *supra*, p. 591. The needs of the Federal Treasury can be cared for as well by payments of unemployment compensation contributions to the States as by payment of taxes to the United States. *Rivard, et al.* v. *Bijou Furniture Company*, 68 R. I. 358, 361, 27 Atl. (2d) 853, 855. That these principles were uppermost in the mind of Congress in extending the credit is apparent from an examination of the reports of both the Senate Finance Committee and the House Committee on Ways and Means.[5]

Moreover, Congress believed that the general welfare of the country would be better served by the payment of contributions into State unemployment compensation funds than by the payment of the tax to the Federal government. *Steward Machine Company* v. *Davis*, *supra*, p. 589.

As indicated, Title IX sets out certain criteria which the State law must satisfy before the taxpayer, who pays contributions under such a law, may avail himself of the credit. These criteria are manifestly designed to promote the fiscal policy of the Federal government by insuring that the State law under which the taxpayer makes his contributions is a genuine and workable unemployment insurance measure. If the State statute were merely masquerading as an unemployment compensation law and had been enacted to take advantage of the credit for some foreign purpose, the Federal fiscal policies which the credit is calculated to serve would be frustrated. *Steward Machine Company* v. *Davis*, *supra*, p. 593.

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[5] Senate Report No. 628, 74th Congress, 1st Session, p. 15; House Report No. 615, 74th Congress, 1st Session, p. 16.

3. Titles III and VII of the Social Security Act.

To further encourage the State to establish unemployment compensation systems, Congress, in Title III of the Social Security Act, provided for grants to cover the administrative costs of such systems (Appendix, *infra*, pp. 30-33). The funds for such grants are derived from the 10% of the Federal tax which the Government retains for the purpose of meeting the costs of administering the State unemployment compensation systems.[6] However, as in Title IX, the State unemployment compensation laws are required to meet certain minimum criteria, intended to advance the fiscal policy of the United States (Appendix, *infra*, pp. 35-37).

That Congress assumed responsibility for the successful operation of the State unemployment compensation systems is evidenced not only by the standards which it prescribed in Titles III and IX and by its supervision of the "Unemployment Trust Fund" but also by the control which it has exercised through the activities of the Social Security Board which it created under Title VII of the Social Security Act (Appendix, *infra*, pp. 37-38). Through the Social Security Board, Congress has continuously reviewed State unemployment compensation legislation

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[6] Message of the President to Congress, January 17, 1935, Cong. Rec., Vol. 79, Pt. 1, p. 546; Hearings before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Session, p. 112; Report of the President's Committee on Economic Security, p. 19; House Report No. 1855, 78th Congress, 2nd Session, p. 27; P. Douglas, Social Security in the United States (1936), pp. 146-148. ". . . administrative costs, if we judge from German and English experience, are likely to equal one-ninth of the benefits or one-tenth of the total costs. See my Standards of Unemployment Insurance, pp. 122-123. It was not by accident, therefore, but rather from the very structure of unemployment insurance itself that the federal government was authorized in Title IX to retain one-tenth of the tax on payrolls instead of for example one-twentieth or, as in the federal inheritance tax two-tenths." Social Security in the United *States, supra*, footnote, p. 147.

and administration to assure conformity with Federal standards, has determined and granted the amount of funds necessary for proper administration of State unemployment compensation systems, has guided the States in improving their legislation and administration, and has engaged in research designed to analyze the character of the problem of unemployment and to serve as a basis for the revision of legislation and administrative techniques dealing with that problem.[7]

4. Amendments to Title IX of the Social Security Act.

It must be emphasized that Title IX of the Social Security Act does not establish a system of unemployment compensation. No provision is made therein for the payment of benefits to unemployed persons. By the credit provisions of Title IX and the grants for administrative purposes in Title III, the States were induced to set up unemployment compensation systems to promote the general welfare of the Nation and to serve the fiscal needs of the Federal Treasury.

The heart of the unemployment compensation program is in the benefits which are paid by the States to unemployed workers and in the contributions which are collected by the States for the payment of such benefits. Time and time again, Congress has demonstrated that it is the payment of contributions to the States which advances the fiscal purposes of the Federal government. Although the credit against the Federal tax was originally allowed only if contributions to State funds were paid within a specified period of time, Congress has repeatedly amended Title IX so as to extend the credit to taxpayers who are delinquent

[7] The Social Security Board, Eighth American Scientific Congress May 10-18, 1940.

in the payment of contributions, in order to induce them to pay their contributions to the States.[8]

5. Related Legislation.

The Social Security Act became law on August 14, 1935. The payment of Federal taxes under Title IX commenced in 1936. A number of the States did not enact their unemployment compensation laws until some time later. In the meantime, the employers in such States, who were subject to the Federal tax, paid the full amount of the tax to the National government. The intention of Congress to achieve the purposes of Title IX through the payment of contributions into State unemployment compensation systems rather than through the payment of taxes to the Federal government is strikingly revealed in its action, in which it turned over 90 per cent of the taxes collected from the foregoing employers to the State unemployment compensation systems which had been established subsequent to the initial payment of Federal taxes under Title IX.[9]

There is still further proof, if need be, of the deep concern which Congress has manifested in the maintenance and growth of State unemployment compensation funds. Congress has fully recognized that such funds would play a major role during the period of post-war readjustment and would serve as the first line of defense for the millions of workers employed in war industries who would be laid off and unemployed during industry's reconversion and readjustment to peace-time production. The Senate and the House appointed Special Committees on Post-war

[8] Section 1601, Internal Revenue Act of 1939; Section 701, Second Revenue Act of 1940; Section 701 Revenue Act of 1941; Section 602 Revenue Act of 1943.

[9] Public Act 353, Ch. 755, 50 Stat. 754; Second Deficiency Appropriation Act 1938, Ch. 681, 52 Stat. 1148.

Economic Policy and Planning, which held extensive hearings on the problem of unemployment compensation in the post-war period.[10] Interviews with representatives of important government and private agencies on post-war problems and plans disclosed that "The fear of unemployment after the war colors the thinking of all the agencies interviewed. Those concerned with the labor problems give it first rank in their planning." [11] As a result of the recommendations of the said Special Committees on Post-war Economic Policy and Planning,[12] Congress enacted legislation guaranteeing the solvency of State unemployment compensation funds.[13]

In view of the tremendous importance which Congress attached to the accumulation of unemployment compensation contributions by the States, it is inconceivable that Congress expected or desired the collection of such contributions to be impaired or jeopardized by the invocation of Section 3466. On the contrary, the legislative purposes underlying Titles III, VII and IX of the Social Security Act reflect an intention on the part of Congress to subordinate the operation of Section 3466 to the paramount interest of insuring the success of the National program of unemployment relief.

In holding that the claim of the petitioner was subordinate to the claim of the United States for taxes under

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[10] Hearings before the Special Committee on Post-war Economic Policy and Planning, United States Senate, 78th Congress, Second Session, part 3, Unemployment Compensation; Hearings before the Special Committee on Post-war Economic Policy and Planning, House of Representatives, 78th Congress, Second Session, Parts 2 and 3, Economic Problems of the Transition Period.

[11] Senate Document No. 106, 78th Congress, 1st Session, p. 79.

[12] Senate Report No. 539, part 5, 78th Congress, 2nd Session, p. 6; House Report No. 1855, 78th Congress, 2nd Session, pp. 27-28.

[13] War Mobilization and Reconversion Act (50 U. S. C. A. App. 1667); Senate Report No. 565, 79th Congress, 1st Session, p. 2.

Title VIII, the Supreme Court of Illinois looked to form, not substance, and disregarded the character and significance of petitioner's claim. In the light of what has already been said, it is unnecessary to labor the point that petitioner's claim serves a Federal purpose, that it is tantamount to a claim of the United States, and that it stems from Title IX of the Social Security Act.

Both Titles VIII and IX are parts of the same Act and are designed to effectuate a common purpose—the general welfare of the United States. ". . . the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poorhouse as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering* v. *Davis, supra*, p. 641. Congress deemed unemployment "an even more prevalent cause of dependency than old age: in fact . . . the most serious of all hazards confronting industrial workers. . . ."[14] Obviously, Congress did not intend that a claim for unemployment compensation contributions should be subordinated to a claim for taxes for old-age security.

It is important to note that in its oral argument before this Court in *Steward Machine Company* v. *Davis, supra*, p. 559, the United States contended that in imposing and collecting contributions under their unemployment compensation laws, the States were raising revenue for the general welfare of the United States; that the framers of the Constitution contemplated three different methods of raising revenue for the general welfare of the Nation.

[14] House Report No. 615, 74th Congress, 1st Session, page 7; Senate Report No. 628, 74th Congress, 1st Session, page 10.

"The first was direct Federal taxation collected by Federal officers. The second was that the Federal government lay the tax but the collection be by the State officers. The third method is that the States raise the revenue for the general welfare of the United States."

To invoke Section 3466 on the grounds that the revenue for old-age security is raised by the Federal government, whereas the revenue for unemployment relief is raised by the States, is totally devoid of merit and utterly foreign to the spirit and purpose of the Social Security Act. The clear-cut purpose and intention of Congress to treat unemployment relief as a Federal obligation and to assume the responsibility for the success of the unemployment compensation systems initiated under Title IX of the Social Security Act is not to be defeated by the sophistry of treating a claim for unemployment compensation contributions as a State claim as distinguished from a Federal claim.

In view of the above, we submit that in and by the enactment of the Social Security Act and related legislation the Congress has clearly manifested an intention that the provisions of Section 3466 shall not apply as between a claim of the United States for Social Security excise taxes and a claim of a State for unemployment compensation contributions exacted under a State statute adopted in accordance with the congressional policy evinced in such Federal Act.

In the recent case of *Rivard* v. *Bijou Furniture Co.*, 67 R. I. 251, 21 Atl. (2d) 563, the Supreme Court of Rhode Island passed upon substantially the same situation as is involved under this portion of the case at bar. In holding that the United States was not entitled to priority under Section 3466 because such a preference would be in con-

flict with the general policy, spirit and purposes of the Social Security Act, that court, in its original opinion, at page 259, said:

> "It is clear to us that the intention of Congress in the federal act was to have the federal government guide and assist the state in a comparatively new field of legislation. It is also clear that congress deemed cooperation between the two governments indispensable for success. To permit the claimed preference by the United States would conflict with the policy, spirit and broad purposes of the federal act. In the circumstances, we believe that congress intended to exclude the indebtedness to the United States in the case before us from the scope of sec. 3466. *United States* v. *Guaranty Trust Co.*, 280 U. S. 478; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, See *United States* v. *Marxen*, 307 U. S. 200, 206. It is therefore our opinion that sec. 3466 is inapplicable in this case to the claims now under consideration."

On rehearing, the government cited four recent cases, two of which are cited in the respondent's brief in opposition in the case at bar. The Supreme Court of Rhode Island, in a modified opinion, reported in 68 R. I. 358, 27 Atl. (2d) 853, considered these cases but refused to retract such previous ruling, saying (page 362):

> "* * * it is urged that the supreme court has recently decided a case which indicates a contrary view to the one we hold. *United States* v. *New York*, No. 238, October Term, 1941, filed March 2, 1942. We have carefully read that case, and, in our opinion, it does not touch upon the precise question here. Moreover, far from being of assistance to the United States in the contention which it makes here, the court seems to entertain a view of the scope and purpose of Title IX that is not unlike what we hold. Thus on page 5, the court, speaking through Mr. Justice Byrnes, says: 'Either the state or the federal government must provide the money to meet the requirements of relief to the unemployed. By his contributions to the state, an

employer has diminished the demand upon the *financial resources of the federal government.*' (Italics ours.)

"Another case which has been decided by the supreme court since our former opinion was filed has been cited to us by the United States to show that R. S. § 3466 must be applied to the case at bar. *United States* v. *Emory*, No. 33, October Term, 1941, filed December 15, 1941. That case involved the national housing act. It was contended in that case, among other contentions, that because of the objectives and provisions of that act, congress must have impliedly intended to surrender the priority accorded to the United States under R. S. § 3466. The court rejected this contention but was closely divided.

"Apparently the court divided on the question whether the national housing act ought to be given the same construction with reference to R. S. § 3466 as was given to the national banking act in *Cook County National Bank* v. *United States*, 107 U. S. 445, and to the transportation act of 1920 in *United States* v. *Guaranty Trust Co.*, 280 U. S. 478. In each of those cases it was held that § 3466 was inapplicable because, from the nature of the legislation, congress impliedly intended that the United States should have no priority under that section. The majority in the *Emory* case felt that such intention could not reasonably be found in the national housing act.

"In the case at bar we are concerned with an act which differs widely from the national housing act. That act contains no comparable provisions to Titles VIII and IX of the social security act. The fiscal provisions of both of those titles, as well as the co-operative feature of Title IX, especially distinguish the social security act from the national housing act. Therefore, we do not think that the construction of that act in the *Emory* case is either a precedent or a safe guide for the construction of the social security act in the case at bar.

"The United States has also cited two other very recent cases which, it urges, lend some support to its contention, although neither involved the precise ques-

tion here. *United States* v. *Texas*, U. S. Supreme Court, October Term, 1941, filed December 22, 1941, and *Matter of White Plains Oil Corp.*, N. Y. Court of Appeals, November 27, 1941. We have read each of those cases and we do not think either one assists the United States under the facts of the instant case."

We therefore submit that in view of the intent of Congress as manifested in the Social Security Act and related legislation, Section 3466 of the Revised Statutes is not applicable to give a claim of the United States for Social Security excise taxes and capital stock taxes a priority over the claim of a State for unemployment compensation contributions when such contributions are exacted under a State statute adopted in accordance with the congressional policy evinced in the Federal act.

II.

THE CLAIM OF THE STATE OF ILLINOIS FOR UNEMPLOYMENT COMPENSATION CONTRIBUTIONS WAS A SECURED CLAIM AND CONSEQUENTLY WAS ENTITLED TO PRIORITY OVER THE UNSECURED CLAIM OF THE UNITED STATES FOR SOCIAL SECURITY EXCISE TAXES AND CAPITAL STOCK TAXES.

The foregoing arguments demonstrate that the United States is not entitled to priority under the provisions of Section 3466 of the Revised Statutes. It is a well established rule that the priority of the United States, if any there be, must rest upon a specific statutory provision, and does not obtain merely by virtue of its sovereign prerogatives. *Price* v. *United States*, 269 U. S. 492, 499; *Mellon* v. *Michigan Trust Co.*, 271 U. S. 236, 239.

In the case at bar, the State of Illinois, through its Director of Labor, had secured a lien under the provisions of Section 26 (a) of the Unemployment Compensation Act of Illinois (Ill. Rev. Stats., 1943, Ch. 48, Par. 243), which, in pertinent part, provides as follows:

> "A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalties became, or shall hereafter become, due."

The debtor was an employer under this statute and the Director's claim against the debtor thereunder was fixed and determined in amount and was based on returns filed by the debtor with the Director (R. 10).

Under this statute, the Director's claim was secured by a lien which had attached to all of the personal property used by the debtor in connection with its business. The debtor was a corporation and could only own such personal property as was appropriate to the transaction of its business. Ch. 32, Sec. 157.5 (d), Ill. Rev. Stat., 1943; *Bixler* v. *Summerfield*, 195 Ill. 147, 153; *People* v. *Chicago Gas Trust Company*, 130 Ill. 268, 287. In the absence of any evidence to the contrary it is, of course, to be presumed that the personal property which the debtor transferred to the trustee was property which the debtor had used in connection with its business and was therefore subject to the State's lien for unemployment contributions. The rule is well settled that

the trustee took such property subject to the lien of the petitioner, *Hooven* v. *Burdette*, 153 Ill. 672, 679.

It is therefore submitted that the claim of the State of Illinois for unemployment contributions was secured by a lien upon the personal property which the debtor turned over to the trustee and that this lien attaches to the funds derived by the trustee from the sale of such property.

In the case at bar the United States does not contend, nor is there evidence in the record to indicate that its claims were secured by a lien.

In *Rivard* v. *Bijou Furniture Company*, 67 R. I. 251, 21 Atl. (2d) 563, 68 R. I. 385, 27 Atl. (2d), the Supreme Court of Rhode Island held that the claims of the state for unemployment compensation contributions and the claim of the United States for federal insurance contributions and capital stock taxes were entitled to parity. However, the court there specifically noted in its opinion that no liens were involved (67 R. I. 253, 21 Atl. (2d) 565). In that respect that case is distinguishable from the case at bar and is therefore not applicable to the issue here presented.

In view of the above, it is submitted that the claim of the State of Illinois for unemployment compensation contributions was a secured claim and consequently was entitled to priority over the unsecured claim of the United States for Social Security excise taxes and capital stock taxes.

CONCLUSION.

In view of the foregoing, it is respectfully submitted (1) that Section 3466 of the Revised Statutes is not applicable to give the claim of the United States for Social Security excise taxes and capital stock taxes a priority over the claim of the State of Illinois for unemployment compensation contributions exacted under an Illinois statute adopted in accordance with the congressional policy evinced in the Social Security Act and related legislation, and (2) that the claim of the State of Illinois for unemployment compensation contributions was a secured claim and was consequently entitled to priority over the unsecured claim of the United States for Social Security excise taxes and capital stock taxes.

Petitioner therefore prays that the said final judgment, opinion and decision of the Supreme Court of Illinois be reversed, with such further orders as may be deemed appropriate.

Respectfully submitted,

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Attorney for Petitioner.

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APPENDIX.

SECTION 3466 OF THE REVISED STATUTES OF THE UNITED STATES.

(31 U. S. C. A. 191.)

Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

THE SOCIAL SECURITY ACT.

Ch. 531, 49 Stat. 620.

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TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION.

Appropriation.

Section 301. For the purpose of assisting the States in the administration of their unemployment compensation laws, there is hereby authorized to be appropriated, for the fiscal year ending June 30, 1936, the sum of $4,000,000, and for each fiscal year thereafter the sum of $49,000,000, to be used as hereinafter provided.

Payments to States.

Sec. 302(a). The Board shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Board under Title IX, such amounts as the Board determines to be necessary for the proper administration of such law during the fiscal year in which such payment is to be made. The Board's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper administration of such law; and (3) such other factors as the Board finds relevant. The Board shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

Provisions of State Laws.

Sec. 303 (a). The Board shall make no certification for payment to any State unless it finds that the law of such State, approved by the Board under Title IX, includes provisions for—

(1) Such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be reasonably

calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices in the State or such other agencies as the Board may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State, immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904; and

(5) Expenditure of all money requisitioned by the State agency from the Unemployment Trust fund, in the payment of unemployment compensation, exclusive of expenses of administration; and

(6) The making of such reports, in such form and containing such information, as the Board may from time to time require, and compliance with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

(b) Whenever the Board, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Board shall notify such State agency that further payments will not be made to the State until the Board is satisfied that there is no longer any such denial or failure to comply. Until it is so satisfied it shall make no further certification to the Secretary of the Treasury with respect to such State.

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TITLE VII—SOCIAL SECURITY BOARD

Establishment.

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of $10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of

four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

Duties of Social Security Board.

Sec. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

Expenses of the Board.

Section 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

Reports.

Sec. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

* * * * * * *

TITLE IX—TAX ON EMPLOYERS OF EIGHT OR MORE.

Imposition of Tax.

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

(1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;

(2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;

(3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

Credit Against Tax.

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

Certification of State Laws.

Sec. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;

(4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organizations;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time. The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved, except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provisions.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

Unemployment Trust Fund.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund," hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judg-

ment, required to meet current withdrawals. Such investments may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other that such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book

account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

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Interstate Commerce.

Sec. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

Definitions.

Sec. 907. When used in this title—

(a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

ILLINOIS UNEMPLOYMENT COMPENSATION ACT.

Ch. 48, Sec. 243, Ill. Rev. Stat., 1943

§26. LIEN CREATED UPON ASSETS OF EMPLOYER—COMMENCEMENT—LIMITATION.) (a) A lien is hereby created in favor of the Director upon all the personal property or rights thereto owned or thereafter acquired by any employer and used by him in connection with his trade, occupation, profession or business, from whom contributions, interest or penalties are or may hereafter become due. Such lien shall be for a sum equal to the amount at any time due from such employer to the Director on account of contributions, interest and penalties thereon. Such lien shall attach to such property at the time such contributions, interest or penalfies became, or shall hereafter become, due. In all cases where a report setting forth the amount of such contributions has been filed with the Director, no action to enforce such lien shall be brought after three years from the date of the filing of such report and in all other cases no action to enforce such lien shall be brought after three years from the date that the determination and assessment of the Director made pursuant to the provisions of this Act become final.

INNOCENT PURCHASER — RECORDATION — WITHDRAWAL OF NOTICE.

(b) (1) Such lien shall be invalid only as to any innocent purchaser for value of stock in trade of any employer in the usual course of such employer's business, and shall be invalid as to any innocent purchaser for value of any of the other assets to which such lien has attached, unless notice thereof has been filed by the Director in the office of the Recorder of Deeds of the county within which the property subject to the lien is situated. The Director may, in his discretion, for good cause shown, issue a certificate of withdrawal of notice of lien filed against any employer, which certificate shall be recorded in the same manner as herein provided for the recording of notice of liens. Such withdrawal of notice of lien shall invalidate such lien as against any person acquiring any of such employers' property or any interest therein, subsequent to the recordation of the withdrawal of notice of lien, but shall not otherwise affect the validity of such lien, nor shall it prevent the Director from re-recording notice of such lien. In the event notice of such lien is re-recorded, such notice shall be effective as against third persons only as of the date of such re-recordation.

FILING OF NOTICE—LIEN INDEX

(2) The Recorder of Deeds of each county shall procure at the expense of the county a file labeled "Unemployment Compensation Contribution Lien Notices" and an index book labeled "Unemployment Compensation Contribution Lien Index." When a notice of any such lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry

shall show the name, and last known business address of the employer named in the notice, the serial number of the notice, the date and hour of filing, and the amount of contribution, interest and penalty thereon due and unpaid. When a certificate of complete or partial release of such lien issued by the Director is presented for filing in the office of the Recorder of Deeds where a notice of lien was filed, the Recorder shall permanently attach the certificate of release to the notice of lien and shall enter the certificate of release and the date in the Unemployment Compensation Contribution Lien Index on the line where the notice of lien is entered.

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PRIORITY OF LIEN.

(d) The lien herein created in favor of the Director shall be prior to all other liens whether general or specific, and shall be inferior only to any claim for wages filed pursuant to "An Act to protect employees and laborers in their claims for wages" approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the Recorder of Deeds as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the Recorder of Deeds as in this Act provided.

FORECLOSURE OF LIEN.

(e) In addition and as an alternative to any other remedy provided by this Act, or by the laws of the State of Illinois, the Director may enforce the lien herein created by petition in the name of the People of the State of Illinois to the Circuit Court of the county wherein the property subject to the lien is situated, praying that the lien which has attached to said property be foreclosed and the aforesaid property be sold in the same manner as in cases of foreclosure of mortgages upon personal property in courts of record. In all such cases, it shall not be necessary that said petition described the property to which said lien has attached and it shall be the duty of the employer against whom such petition has been filed to file in said proceedings, a full and complete schedule, under oath, of all personal property and rights thereto which he owned at the time the contributions, upon which the lien sought to be foreclosed is based, became due, or which he subsequently acquired, indicating upon such schedule the property so owned by such employer which was, or is used by such employer in connection with his trade, occupation, profession or business, and if such employer shall so fail to do after having been so ordered by the court, he may be punished as in other cases of contempt of court.

The court in which such proceedings shall be pending may issue such process, make such orders requiring the parties to appear and require such notice to be given as is, or may be made, in other civil actions and shall have the same power and jurisdiction of the parties in such matter, and the rules of practice shall be the same as in other civil cases except as is otherwise provided by this Act.

Upon sale of the aforesaid personal property, the proceeds shall be applied to the payment of the costs incurred in the proceeding; the satisfaction of such liens as have attached to said property in the order of their priority and the balance, if any, to such parties as the Court shall find to be entitled thereto. The Director is hereby empowered to bid at any sale conducted pursuant to the provisions of this Act.